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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Interconnection Between Local ) CC Docket No. 95-185  
Exchange Carriers and Commercial )  
Mobile Radio Service Providers )

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**REPLY COMMENTS OF  
WATERWAY COMMUNICATIONS SYSTEM, INC.**

Waterway Communications System, Inc. ("WATERCOM"), respectfully submits these reply comments in response to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("Commission") on January 11, 1996 in the above-referenced proceeding. 61 Fed. Reg. 3644 (February 1, 1996).<sup>1/</sup> In the NPRM, the Commission proposed a new regulatory regime to govern compensation arrangements related to interconnection between local exchange carriers ("LEC") and commercial mobile radio service ("CMRS") providers.

**I. BACKGROUND**

1. WATERCOM is the licensee of an Automated Maritime Telecommunications System ("AMTS"), licensed under Part 80, Subpart J, of the Commission's rules and regulations. 47

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<sup>1/</sup> In an Order and Supplemental Notice of Proposed Rulemaking released by the Commission on February 16, 1996, the deadline for filing reply comments on the NPRM was extended from March 12, 1996 to March 25, 1996. 61 Fed. Reg. 6961 (February 23, 1996).

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C.F.R. §§ 80.475-80.479 (1994). The WATERCOM network, located along the Mississippi, Illinois, and Ohio rivers and the Gulf Intracoastal Waterway, provides interconnected telecommunications service to the maritime industry operating along these waterways. WATERCOM has been classified as a CMRS provider by the Commission.

Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1448 (1994) ("Regulatory Treatment of Mobile Services").

2. In contrast to landside CMRS providers such as cellular telephone companies and Personal Communications Service operators whose customer base potentially numbers in the millions, WATERCOM's potential customer base numbers less than 5,000. An understanding of and appreciation for this differentiation in the size of the customer bases of various CMRS providers is critical to this proceeding in that the economies of scale and market power attainable by other classes of CMRS providers simply are not achievable by WATERCOM or other AMTS licensees.


3. WATERCOM did not file initial comments in this proceeding. However, WATERCOM has participated actively in earlier stages of this proceeding and in other proceedings involving interconnection between CMRS providers and LECs. See, e.g., Comments of Waterway Communications System, Inc., CC Docket No. 94-54 and RM 8012 (September 9, 1994).

## II. DISCUSSION

### A. The Commission Should Establish A Rebuttable Presumption In Favor Of A "Bill and Keep" Method Of Compensation

4. WATERCOM urges the Commission to establish a rebuttable presumption in favor of a "bill and keep" method of compensating LECs and CMRS providers for terminating each others' traffic. Under a "bill and keep" regime, neither LECs nor CMRS providers would receive compensation for terminating traffic that originates on each others' networks. Rather, LECs and CMRS providers would recover from their own customers the cost of originating traffic delivered to each others' networks and of terminating traffic received from each others' networks. A rebuttable presumption in favor of a "bill and keep" arrangement would require individual LECs and CMRS providers to terminate each others' traffic without compensation unless they voluntarily agree to some other compensation arrangement. WATERCOM believes that a rebuttable presumption of this sort would promote the public interest and that it would be consistent with the recently enacted Telecommunications Act of 1996 ("Act"). Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

5. The record in this proceeding is replete with evidence that the Commission's current policy regarding



working as intended. At present, the Commission requires LECs to offer interconnection to CMRS providers on reasonable terms and conditions, and to do so pursuant to the principle of mutual compensation.<sup>2/</sup> Regulatory

Treatment of Mobile Services, 9 FCC Rcd 1411, 1497-98.

However, as demonstrated by many commentors, LECs generally do not abide by the Commission's mutual compensation requirement.<sup>3/</sup> The Alliance of Wireless Service Providers ("Alliance"), for example, argued that many LECs have been unwilling to negotiate compensation arrangements with CMRS providers for the termination of LEC traffic. Alliance Comments at 5. Moreover, the Rural Cellular Corporation ("RCC") asserted that it is unaware of any LECs that compensate CMRS providers for their role in terminating traffic that originates on LEC networks. RCC Comments at 3. Some commentors even indicated that CMRS providers frequently are required to pay LECs for terminating their

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<sup>2/</sup> The principle of mutual compensation requires that compensation for the origination and termination of traffic between LEC and CMRS provider networks must flow in both directions -- LECs must compensate CMRS providers and vice versa -- but no specific level of compensation has been mandated by the Commission. NPRM at 14, n. 31.

<sup>3/</sup> The Commission itself noted that, at an earlier stage of this proceeding, many commentors strongly argued that its mutual compensation requirement is being used by LECs to reduce competition. NPRM at 8.

traffic. See, e.g., Bell Atlantic NYNEX Mobile, Inc. ("BANM") Comments at 4-5.

6. WATERCOM believes that a rebuttable presumption in favor of a "bill and keep" arrangement would be the most equitable and efficient way to remedy the ineffectiveness of the mutual compensation requirement. Establishment of such a rebuttable presumption would advance the public interest because it could be implemented quickly, without the need for LECs and CMRS providers to employ large numbers of accountants, lawyers, and economists; and it would be simple to administer and enforce. Sprint Spectrum and American Personal Communications ("Sprint and APC") Comments at 20; see also NPRM at 30; Alliance Comments at 6-7. Moreover, it would create rational economic incentives for both LECs and CMRS providers. Neither party would have the incentive or capability to manipulate compensation payments by trying to terminate only a certain volume of traffic on the networks of the other party, and each party would have the incentive to keep termination costs as close to zero as possible.<sup>4/</sup> Decreased incentives for manipulation of traffic also may push the balance of traffic between LECs and CMRS providers

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<sup>4/</sup> Sprint and APC demonstrated that there would be little risk of harm to LECs or CMRS providers if a "bill and keep" regime were to be implemented because the cost of terminating traffic is almost zero. Sprint and APC Comments at 20-22.

into closer balance. See, e.g., Sprint and APC Comments at 21. Sprint and APC also noted in their comments that, notwithstanding the opposition of some LECs to use of "bill and keep" arrangements in the context of LEC/CMRS provider interconnection, the benefits of "bill and keep" have been recognized by the LECs in that they frequently employ "bill and keep" principles among themselves. Sprint and APC Comments at 19. WATERCOM, therefore, believes that "bill and keep" arrangements represent not only a workable interim solution to LEC/CMRS provider compensation issues, as the Commission tentatively concluded in the NPRM, but also that a rebuttable presumption in favor of such arrangements should be established on a long-term basis.

7. A "bill and keep" arrangement would be particularly beneficial to WATERCOM and other small CMRS providers. As noted above, WATERCOM's potential customer base is much smaller than that of many CMRS providers. WATERCOM, therefore, may not have the economies of scale or the market power, much less the resources, needed to negotiate favorable compensation arrangements with every LEC that terminates its traffic or that originates traffic terminated by it. Establishment of a rebuttable presumption in favor of "bill and keep," therefore, would help small CMRS providers, such as WATERCOM, in their dealings with

LECs, while giving LECs and CMRS providers the option of negotiating different compensation arrangements.

8. Establishment of a rebuttable presumption in favor of "bill and keep" arrangements would be consistent with the Act. While the Act provides for negotiated interconnection agreements between LECs and other telecommunications carriers, including CMRS providers, it does not preclude those agreements from containing "bill and keep" arrangements. With regard to compensation arrangements, Section 251 of the Act, among other things, requires incumbent LECs to establish reciprocal compensation arrangements with other telecommunications carriers for the transport and termination of telecommunications. A "bill and keep" regime constitutes a reciprocal compensation arrangement within the meaning of the Act.<sup>5/</sup> As such, the Commission is not precluded by the Act from establishing a rebuttable presumption in favor of "bill and keep."

9. Unfortunately, the NPRM unwisely proposes to limit the "bill and keep" principle to LEC end office traffic rather than apply the principle consistently throughout the relationship between CMRS providers and LECs. NPRM

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<sup>5/</sup> Section 252(d)(2)(B) of the Act, which describes the terms and conditions of reciprocal compensation arrangements that would be considered just and reasonable under the Act, specifically references arrangements that waive mutual recovery of cost, such as "bill and keep" arrangements.

at 29-31. WATERCOM believes that "bill and keep" principles also should apply to the provision of transport between LEC and CMRS provider networks. Currently, WATERCOM must pay LECs for dedicated transport and tandem switched transport facilities, but receives no compensation from LECs when those facilities are used to transport traffic for termination by WATERCOM. Because there is no justification for this inequitable situation, WATERCOM urges the Commission to extend the "bill and keep" principle to transport traffic as well as end office traffic.

**B. The Commission Should Require That Interconnection Agreements Between Local Exchange Carriers And Commercial Mobile Radio Service Providers Be Publicly Disclosed, But Not Tariffed**

10. In the NPRM, the Commission tentatively concluded that compensation arrangements related to interconnection between LECs and CMRS providers should be made publicly available, but it asked for comment on whether this public disclosure should take the form of a tariff filing requirement. NPRM at 42-45. WATERCOM believes that simply requiring public disclosure of these sorts of compensation arrangements would be sufficient to protect the public interest and, for this reason, it is opposed to a tariff filing requirement.

11. To the extent the Commission establishes a rebuttable presumption in favor of "bill and keep"



arrangements, the issue of whether compensation arrangements related to interconnection between LECs and CMRS providers should be tariffed only will arise if individual LECs and CMRS providers enter into arrangements of this sort.

However, in the event individual LECs and CMRS providers do enter into such compensation arrangements, WATERCOM concurs with the conclusion of many commentators that tariffing would be unnecessary to prevent the LECs from using their market power to impose unreasonable terms on CMRS providers or from discriminating among CMRS providers. See, e.g., BANM Comments at 16-17. Public disclosure, by itself, should be adequate to permit self-regulation through competition.

Moreover, WATERCOM agrees with those commentators that argued that tariffing would be extremely costly and burdensome and that it would discourage flexibility and innovation in the establishment of compensation arrangements. Id.; see also Sprint and APC Comments at 34-35; GTE Service Corporation Comments at 40.

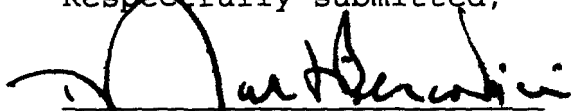
**C. CMRS Providers Should Not Be Required To Impose Access Charges On Interexchange Carriers For The Origination Or Termination Of Interstate, Interexchange Traffic**

12. WATERCOM agrees with the Commission's tentative conclusion that CMRS providers should be entitled to recover access charges from interexchange carriers ("IXCs"), as LECs are permitted to do, whenever interstate, interexchange traffic passes from CMRS provider networks to IXCs, or vice

versa, via LEC networks. NPRM at 56. However, CMRS providers should not be required to impose access charges on IXCs. For small CMRS providers such as WATERCOM, the cost of recovering the access charges likely would exceed the amount recoverable from IXCs.

**WHEREFORE, THE PREMISES CONSIDERED,** Waterway Communications System, Inc., respectfully urges the Commission to: (1) establish a rebuttable presumption in favor of the "bill and keep" approach to terminating traffic between LEC and CMRS provider networks; (2) require the public disclosure, but not the tariffing, of compensation arrangements related to interconnection between LECs and CMRS providers; and (3) permit, but not require, CMRS providers to impose access charges on IXCs for the origination and termination of interstate, interexchange traffic.

Respectfully submitted,



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Dated: March 25, 1996

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Reply Comments of Waterway Communications System, Inc., were served by hand this 25th day of March 1996 on the following parties:

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